

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNIVERSAL CITY STUDIOS, INC., :
Plaintiff, :
-against- :
NINTENDO CO., LTD. and :
NINTENDO OF AMERICA, INC., :
Defendants. :
----- x

Deposition of Plaintiff UNIVERSAL
CITY STUDIOS, INC., by ROBERT D. HADL, taken
by Defendant, pursuant to notice (as adjourned
by stipulation), dated October 28, 1982 at
the offices of Mudge Rose Guthrie & Alexander,
Esqs., 20 Broad Street, New York, New York
10005, before Donna Tursi, RPR and Notary Public
within and for the State of New York.



WALTER SHAPIRO, C.S.R.
CHARLES SHAPIRO, C.S.R.

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1
2 is because I believe the question is MCA or its em-
3 ployees.

4 Q Or representatives -- excuse me.

5 A I believe in conversations with Mr. Kroft,
6 he may have been in touch with them. I have had some
7 vague recollection that Mr. Kroft may have been in-
8 volved with representatives of RKO, otherwise the
9 answer is no.

10 Q In conjunction with the so-called "King
11 Kong" litigation with RKO, does Mr. Kroft report to
12 you or to someone else at MCA?

13 A Well, you are suggesting that it's on-
14 going. It was my understanding that that litigation
15 was terminated. If something were to happen involving
16 the King Kong -- a King Kong matter now, Mr. Kroft
17 would be reporting to me.

18 MR. KIRBY: Would you please mark this
19 as Defendants' Exhibit 2 for identification.

20 ("Assignment of Causes of Action," dated the 15th day
21 of June 1982, purportedly signed by an officer of RKO
22 General, Inc., was marked Defendants' Exhibit 2
23 for identification.)

24 Q Mr. Hadl, I am handing you a document
25 entitled "Assignment of Causes of Action," dated

the 15th day of June 1982 purportedly signed by an officer of RKO General, Inc.

Are you familiar with that document?

A Yes, I am.

Q You've seen this document before?

A Yes.

Q When did you first see this document?

A I believe I saw this document when it was prepared for me by counsel.

Q Do you know when that was?

A It would have been sometime within the period prior to June 15, 1982.

Q Was that prepared for you by Mr. Kroft?

A I believe so.

Q Was it prepared at your direction?

A I don't recall. I think Mr. Kroft may have recommended to me that it be prepared.

Q And did you cause the document to be sent to RKO General?

A I believe so.

Q Did you personally send it to someone at RKO General?

A I believe so.

Q Who did you send it to?

1
2 A Well, I can't read the signature on this
3 document, but I would suspect it's the gentleman whose
4 name appears there.

5 Q Does his first name appear to be Arnold?

6 A That's correct.

7 Q He's designated as the vice president of
8 RKO General, Inc.?

9 A That's correct.

10 Q Prior to sending this to Arnold
11 illegible, did you have any discussions with him?

12 A Yes, I believe we talked on the telephone.

13 Q Do you recall when that was?

14 A I believe it would have been within the
15 period immediately prior to the date reflected on
16 the document.

17 Q How did you determine to call Arnold
18 illegible? How did you decided to call him?

19 A I think Mr. Kroft recommended that I
20 call him.

21 Q He furnished you a name for someone
22 to contact?

23 A That's correct.

24 Q What did you say to Arnold?

25 A I believe I indicated to him that at

1
2 Mr. Kroft's recommendation we were asking him to
3 supply us with the document which you've shown me
4 here and that I hoped he would be able to sign it and
5 send it to us.

6 Q And what did he say to you?

7 A I think his answer was yes, he would.

8 Q Did you describe for him the nature of
9 the document which you were --

10 A Yes, I believe I did.

11 Q Now that document begins: "For valuable
12 consideration." What consideration did Universal
13 pay to RKO for this document?

14 A We did not pay RKO any monetary con-
15 sideration.

16 Q My question was broader. I said what
17 consideration did you pay?

18 A As I recall, the nature of this document,
19 the essence of the situation was whether or not
20 RKO would join with us in the action against Nintendo
21 or whether or not rather than directly a party they
22 would assign -- and again I believe this is now
23 getting into the legal area, what rights ~~or access~~ *THA*
24 they had or might have had so that they would not
25

A 351

1 have to be a plaintiff in the action. And that was
2 the basis on which they agreed to execute.
3

4 MR. KIRBY: Do you wish to confer with
5 the witness, Mr. Fairhurst?
6

7 MR. FAIRHURST: Yes.
8

9 Off the record.
10

11 (Discussion off the record.)
12

13 MR. KIRBY: Are you through Mr. Fairhurst?
14

15 MR. FAIRHURST: Yes.
16

17 Q Mr. Hadl, is it your testimony that you
18 requested RKO General through its representatives to
19 join with Universal in a suit against Nintendo?
20

21 A Well, the answer to that is no. And I'd
22 like to -- I think it needs to be explained a little.
23 Again, I was here operating upon the advice of counsel,
24 Mr. Kroft, who was counsel of record in the RKO case,
25 and it was his advice to me that --

MR. KIRBY: Do you wish to confer again?

MR. FAIRHURST: Self-evident, yes. The

answer is yes.

MR. KIRBY: Let's make it self-evident for
the record, if you are going to interrupt the
witness' answer. Perhaps let him finish the
answer.

A 352

MR. FAIRHURST: I wish to do it this way.

MR. KIRBY: You do wish to have him interrupt his answer and pick it up after conferring with you?

MR. FAIRHURST: I wish to do what I am doing. You can describe it however you wish to describe it.

Off the record.

(Discussion off the record.)

A What Mr. Fairhurst and I were coming to the same conclusion, myself -- we are getting into an area where Mr. Kroft was giving me legal advice and I am not sure at what point really I might want to say that this is a privileged matter.

I think, if you want to restate the question, I'll see whether I can continue the answer.

Q I won't restate the question.

MR. KIRBY: Please read the question, Ms. Reporter, and read the answer up to the time that Mr. Fairhurst interrupted the witness.

MR. FAIRHURST: Mr. Fairhurst didn't interrupt the witness, the witness indicated. The witness was getting into a question of whether legal advice was being sought, and

Mr. Fairhurst decided to confer with his client at that point. It's how one sees these things.

(Record read.)

BY MR. KIRBY:

Q Do you wish to continue your answer?

A Yes, I do. I believe that the advice Mr. Kroft gave to me was advice which he gave to me in a legal capacity which was not advice that was shared with anyone else.

And I think, therefore, I would stand with the answer to the question which I believe was "No."

Q So that we understand it, you did not ask RKO to join Universal in a suit against Nintendo?

A What we asked RKO is whether they would agree to sign this piece of paper which in fact they did.

Q What consideration did you pay RKO for signing this sheet of paper?

A I thought I answered that.

Q You said you paid them no monetary consideration, I said that did not answer the question: Did you pay them any consideration? The document cites consideration was furnished. I am asking you

A 354

1
2 what it was.

3 MR. FAIRHURST: It's not apparent that
4 an assignment needs consideration in the State
5 of New York or in the common laws of most
6 states.

7 MR. KIRBY: Thank you, Mr. Fairhurst.

8 Q What consideration was paid?

9 A I'm having some trouble answering the
10 question because apart from the answer I've already
11 given, namely, that they agreed to give us this
12 assignment rather than appear as a plaintiff in the
13 action, I believe that that's the consideration that
14 was -- apart from Mr. -- which I also know that I
15 don't know if you have to have consideration for an
16 assignment, but since you are referring to the
17 specific statement in the document, I believe that
18 was the essence of the reason for this particular
19 document.

20 I might also say to you that I don't
21 recall whether words "for valuable consideration"
22 were drafted by Mr. Kroft or added by Mr. Arnold,
23 whose name you can't read.

24 Q Did you send this document or a draft
25 of this document to Mr. Arnold by mail?

1
2 A Yes, I believe I did. And I'm saying I
3 don't recall whether the words "for valuable con-
4 sideration" were put in the draft which Mr. Kroft
5 gave me or whether they were added by Mr. -- by
6 the gentleman who signed this on behalf of RKO.

7 Q Did you send it by cover letter to
8 Mr. Arnold blank /illegible?

9 A I would assume I did. I don't recall, but
10 I would assume I did.

11 Q Would you retain a copy of that letter
12 that you sent to him if you did send one to him?

13 A Yes, I would.

14 Q And the copy of the document that you
15 did send to him?

16 A Yes, I would.

17 Q Would you please look in your file and
18 furnish us with a copy you sent Arnold blank and
19 the documents you sent with it?

20 Now, how many conversations did you have
21 with Arnold -- and forgive me, and for the record I
22 apologize for the colloquialisms but rather than call
23 him Arnold illegible can we all understand Arnold
24 illegible is the one who signed this document at RKO?

25 A Do you have his name? Nobody knows his

1
2 name.

3 Q You're the one who dealt with him not me.

4 MR. FAIRHURST: Looks like Kaufman,
5 stylized signature but I wouldn't --

6 A Well, I recognize him, but was just
7 wondering whether anyone --

8 MR. FAIRHURST: That's the only signature
9 I think we have. Do you have a better signature?

10 MR. GALLATIN: I have the document you
11 furnished to us and it's no better than that
12 copy.

13 A The answer to the question is I think I
14 talked to him once.

15 Q Did you offer him the opportunity to par-
16 ticipate in the litigation against Nintendo?

17 A I believe what I told him was what
18 Mr. Kroft's recommendation was. I don't think I
19 offered him an opportunity to participate.

20 Q What did you tell him?

21 A I believe what I said to him is what I
22 tried to describe before that on advice of counsel
23 it was felt that -- first of all I told him about
24 the litigation and what we were intending to do,
25 bring an action against Nintendo and the reasons why.

1
2 I believe that I then told him that on advice of
3 counsel, Mr. Kroft, it appeared there might be some
4 reason, and again I was not clear about that because
5 I had not participated in the litigation, but some
6 reason to add RKO as a plaintiff, and one could either
7 do that or one could get an assignment from him which
8 would obviate that necessity. And asked him whether
9 he had any problem.

10 He said no, he did not. He said he would
11 sign the assignment.

12 Q Did he ask you or did you advise him
13 whether you were suing for money damages?

14 A I don't recall.

15 Q Did he ask whether or not RKO would share
16 in anything if you were successful in the litigation?

17 A I don't believe that that was an issue
18 because I think, as I recall, the issue was strictly
19 whether RKO would be named as a plaintiff because
20 of a trustee-type relationship in which event they
21 would not share in any of the -- if there were mone-
22 tary damages, to the beneficiary, being Universal.

23 Q Is that your recollection of your thoughts
24 or is that your recollection of what you said to him?

25 A That's my recollection of what Mr. Kroft

1
2 advised me and what I said to him.

3 Q And what you said to--

4 A To Mr. Arnold blank.

5 Q Did Mr. Arnold ask whether or not RKO
6 would be entitled to share in the benefits of any
7 lawsuit if there were to be any such benefits?

8 A I think, if I recall, that did not come
9 up because apparently -- the gentleman who signed
10 this document had the same legal point of view as
11 Mr. Kroft.

12 Q Did you demand that RKO furnish you such
13 a document?

14 A No.

15 Q Did you say to him that RKO was required
16 by some other agreement to give you this document?

17 A No.

18 Q You discussed it with him that it was a
19 free voluntary act on the part of RKO to furnish this
20 document to Universal?

21 A Yes.

22 Q And he did not ask you for any consider-
23 ation whatsoever?

24 A Correct.

25 Q But he may have changed the document

1
2 from the form in which you sent it to him to the form
3 in which he actually executed it?

4 A When you say to me that he didn't ask
5 for any consideration whatsoever, apart from what
6 I've described to you all right, he didn't ask for
7 any monetary consideration which is, I think, what
8 you asked me before.

9 Q Well, let me make sure we're both entirely
10 clear on this. I'm asking about any consideration.
11 Monetary or non-monetary.

12 MR. FAIRHURST: Doesn't that get into
13 a legal conclusion as to what consideration is,
14 under the circumstances? I mean I could argue
15 with you the considerations and forbearance
16 of joining the lawsuit and subjecting oneself
17 to the cost and the travail associated with
18 the litigation. That's the consideration, but I
19 think what you are doing is --

20 MR. KIRBY: Is that --

21 MR. FAIRHURST: Let me finish. You do
22 this all the time. Now, please, let me finish.
23 We cannot have the court reporter taking down
24 two people at one time.

25 MR. KIRBY: Is Mr. Hadl adopting your testimony

1
2 to Mr. Dino DeLaurentiis Corporation and signed by
3 Universal City Studios, Inc. Apparently bearing --
4 I'm sorry the signature is illegible but a gentleman
5 designated president and chief operating officer. I
6 ask you if you can look at the document and tell me
7 whose signature is there and whether you've ever seen
8 that document before?

9 A Well, I can tell you that the signature
10 is Sidney J. Sheinberg who is president and chief
11 operating officer. I can also tell you that I do not
12 believe I have ever seen this document before.

13 Q Now, Mr. Hadl, I realize that you have
14 testified that as to these documents that you may have
15 seen some of them as part of the stack that came from
16 Mr. Kroft's office to you, but I don't really have
17 any specific recollection of seeing any of them, and
18 you had not seen any of them prior to the time that
19 stack arrived.

20 Nevertheless, for the record, will you
21 tell me, referring to Defendants' Exhibit 4 for identi-
22 fication, whether you are able to advise me as to
23 what rights Universal claims under the agreement which
24 has been designated Defendants' Exhibit 4 for identi-
25 fication?

1
2 MR. FAIRHURST: So I understand your
3 question, Mr. Kirby, are you asking him to
4 explain the contents of this document?

5 MR. KIRBY: I am not asking him to testify
6 as to what's specifically the contents or to
7 read sections of it for the record; I am asking
8 him whether he knows what rights Universal is
9 claiming with respect under this agreement.

10 MR. FAIRHURST: Other than what the
11 agreement says?

12 MR. KIRBY: I am asking him if he has
13 any understanding of what Universal claims as
14 a result of this agreement. I realize that he
15 has not read it before.

16 MR. FAIRHURST: I guess he would have to
17 read it.

18 MR. KIRBY: I am not asking him to read
19 it, I am asking him if this document has been
20 handed to him, discussed with him, represented
21 to him as containing certain specific rights
22 which Universal has acquired as a result of this
23 agreement.

24 MR. FAIRHURST: All right. That question
25 is a fair one, I have no problem with it

whether someone represented at Universal had some rights under this document described it.

MR. KIRBY: Under this specific document, Defendants' Exhibit 4.

THE WITNESS: Under this specific document?

MR. KIRBY: Yes.

A No.

Q What about under Defendants' Exhibit 5?

A No.

Q What about Defendants' Exhibit 3 for identification?

A That particular document?

Q Yes, that particular document.

A Alone?

Q Yes, that particular document alone.

A No.

Q To aid you, Mr. Hadl, I am asking -- I'll ask this again about each specific document alone.

As to Defendants' Exhibit 3 --

A No --

Q Well, let me finish.

A Sorry.

Q Do you have any personal opinion as to

1
2 what rights Universal has as a result of that document?

3 MR. FAIRHURST: Which one, now?

4 MR. KIRBY: 3.

5 A Do I have a personal opinion?

6 MR. FAIRHURST: Wait a minute, we don't
7 have to rush here. You're asking what his
8 personal opinion here is of the contents of
9 number 3. I don't understand the question.

10 MR. KIRBY: I'm asking him as to what
11 rights he understands or believes Universal
12 has as a result of Defendants' Exhibit 3 for
13 identification.

14 MR. FAIRHURST: Other than what's set
15 forth in the document?

16 MR. KIRBY: Whether as set forth in the
17 document or otherwise.

18 MR. FAIRHURST: I don't know how you can
19 answer the question the way you put it. I
20 certainly can't. You're asking him what's in
21 document number 3?

22 MR. KIRBY: No, he can't testify about
23 that since he doesn't think he can ever read it.

24 MR. FAIRHURST: Well, he can read it and
25 recite it. I don't understand the question is

A 364

what I'm getting at.

MR. KIRBY: We'll withdraw the question.

Now, do you have a copy of your interrogatory answers?

MR. FAIRHURST: Yes.

Q You did review these prior to coming here for your deposition?

A Yes.

Q Now, the answer to interrogatory number 1, would you please take a look at that, please.

A Yes.

Q Are you able to tell me, as to Universal's rights in the trade name King Kong, whether that derives from Defendants' Exhibit 3, Defendants' Exhibit 4 or Defendants' Exhibit 5?

MR. FAIRHURST: Without reading them, you mean? He's testified he hasn't read them just now, just so we understand what we're doing this isn't a civil service quiz and I am trying to make this thing make some sense.

If you're saying should we read the documents now in order to answer that question, we will do that if that's what you're at.

I don't quite understand.

MR. KIRBY: Mr. Fairhurst, please let me conduct this examination, I'll attempt to make this as intelligible as possible.

In Universal's response to interrogatory number 1 as verified by Mr. Hadl it lists certain specific rights of Universal with respect to King Kong. It lists rights as to trade name, trademark, service mark, character and story. And it says they are derived from the following documents.

THE WITNESS: That's correct.

MR. KIRBY: Now, what I am asking Mr. Hadl to do if he can -- if he can't then we don't have to go on with it -- is whether or not he can relate the claim right to a specific document.

MR. FAIRHURST: All right.

A The answer to that is no.

Q Thank you.

Do you know a Loretta Sifuentes?

A Yes, I do.

Q Who is she?

A She was employed by, I believe, Merchandising Corporation of America.

1
2 Q Did Mr. Sheinberg give you any instructions
3 in the course of this report of the meeting?

4 A I don't think he gave me any specific
5 instructions other than that if we felt there had
6 been infringement of our rights to bring an action.

7 Q Against Coleco?

8 A When I say "bring an action," obviously
9 we first sent out the telegram and if we couldn't
10 resolve the matter then bring an action but, yes
11 against both Nintendo and Coleco.

12 Q Who drafted the telegram you sent to
13 Nintendo and Coleco?

14 A Mr. Kroft.

15 Q That's Mr. Kroft outside attorney?

16 A That's correct.

17 Q And that telegram was sent out under
18 Mr. Sheinberg's signature?

19 A I don't recall specifically, I think it
20 was.

21 Q Did you review the telegram prior to it
22 being sent out?

23 A Yes, I did.

24 Q When did you first become aware of the
25 video arcade game Donkey Kong?

A 367

1
2 A The month of April, 1982.

3 Q How did you become aware of it?

4 A Mr. Sheinberg told me about it, asked me
5 to look into it.

6 Q Did he tell you how he became aware of it?

7 A No, I think he either saw a newspaper ad
8 or somebody he saw -- I think more specifically he
9 may have seen something, an advertisement in one of
10 the trade publications for it.

11 Q Did he send you a copy of what he had
12 signed?

13 A I believe he did.

14 Q Do you have a copy of what he sent you
15 in your file?

16 A I don't know. I believe I sent it to
17 Mr. Kroft and asked him if he would spend a little
18 bit of his time and 25 cents and find an arcade and
19 go play a game.

20 Q Did you ask him that orally or by letter?

21 A Orally.

22 Q When you sent the material Mr. Sheinberg
23 sent to you to Mr. Kroft, did you send it under
24 cover of a letter?

25 A No, not that I recall.

1
2 Q Other than the report from Mr. Sheinberg
3 to you, did anyone else report to you about the
4 existence of a video arcade game called Donkey Kong?

5 A No.

6 Q And Mr. Sheinberg's report to you was at
7 a meeting or by telephone?

8 A I think he just send me whatever he had
9 seen in one of the trade magazines with what may have
10 been a little note that said either "Please call me"
11 or "Please investigate," something very short to that
12 effect.

13 Q When was the first time after you received
14 that from Mr. Sheinberg that you discussed the
15 matter with Mr. Sheinberg?

16 A Well, I recall all of this happening
17 within a very short period of time. I believe it was
18 right after I received this from him I talked to
19 Mr. Kroft and I believe that I also asked my three
20 children whether they knew about this game.

21 Q And they reported?

22 A Quite certainly they knew about it. And
23 I also asked them whether we could go and play it,
24 and I think within a period of three or four days we
25 did so.

Q When you say "we," you mean you and your children?

A That's correct.

Q Did you play or just your children?

A I did. I may have given them a few extra quarters.

Q Had you conducted this expedition into the arcades prior to the time you sent the telegram to Nintendo?

A Oh, yes.

MR. KIRBY: Would you mark this Defendants' Exhibit 9.

(Document consisting of a telegram sent by Robert D. Hadl to Nintendo Co., Ltd., was marked Defendants' Exhibit 9 for identification.)

Q Mr. Hadl, I am going to ask you to look at Defendants' Exhibit 9 and tell me whether or not that is the telegram to which you referred. And then I am going to suggest that we break for lunch.

A Yes, it is.

MR. KIRBY: Off the record.

(Discussion off the record.)

(At 12:55 p.m. a luncheon recess was taken.)

1
2 "Universal claims the following: all rights except
3 publishing rights in and to the story King Kong."

4 Do you see that reference?

5 A Yes, I do.

6 Q Do you know who does have the publishing
7 rights in and to the story King Kong?

8 A No.

9 Q But Universal is accurate, as stated in the
10 interrogatory answers, Universal does not claim pub-
11 lishing rights in and to the story King Kong?

12 A Yes.

13 Q Does Universal claim the right in any
14 copyrights related to King Kong?

15 A I don't know the answer to that.

16 Q Who would know the answer to that?

17 A Mr. Kroft.

18 Q To make sure I have this clear, you testi-
19 fied that Mr. Kroft drafted this telex?

20 A That's correct.

21 Q That's Defendants' Exhibit 9, is it?

22 A That's correct.

23 Q Did you make any changes in this telex prior
24 to its being sent out?

25 A I may have.

1
2 Q Can you point to any changes that you think
3 you made or that you may have made?

4 A I have some recollection of discussing with
5 Mr. Kroft the time period for a response. Here in the
6 telex it's 48 hours were given. I don't recall whether
7 that was the period that was originally contained in his
8 draft. I have some sense that we had some discussion
9 about that.

10 Q Did you make any changes in the body of the
11 telex other than with respect to the time in which a
12 response was demanded?

13 A I may have, but I don't recall any others
14 at the present time.

15 Q Did you make any changes in the description
16 of the rights which Universal was specifying it had?

17 MR. FAIRHURST: Sorry, would you repeat the
18 question? I didn't hear it.

19 (Record read.)

20 A No, I do not believe so.

21 Q Did anyone other than you at Universal review
22 the telegram that Mr. Kroft prepared for you?

23 A I don't think so.

24 Q Specifically, do you know if Mr. Sheinberg
25 reviewed the telegram?

1
2 A That's what was going on in my mind. I
3 don't believe so.

4 Q Did anyone, to your knowledge, in the legal
5 department at Universal review this telegram?

6 A Again, I have the same answer, I don't
7 believe so.

8 Q Now, after the telegram was sent, do you
9 recall that there was a meeting with representatives
10 of Coleco at which representatives of Universal and
11 Nintendo were present?

12 A Yes. As I testified earlier this morning,
13 Universal, Nintendo and Coleco.

14 Q During the course of that meeting, did you
15 have the occasion to meet privately with representatives
16 of Coleco? And by "privately," I mean to the exclusion
17 of representatives of Nintendo.

18 A Well, as I recall the meeting, there were
19 several instances in which people were excused from the
20 room to go and caucus. I specifically recall Coleco
21 and Nintendo leaving the room for that purpose. I do
22 not specifically recall a point in time at which I met
23 with Coleco alone and Nintendo was not in the room.

24 Q Subsequent to that meeting, which I will
25 refer to as a general meeting, was there another meeting

A 373

1 attended just by representatives of Coleco and Universal?

2 A No, I don't believe there was. I think
3 that -- and again, it's hard to put this all into the
4 right chronological order -- but my recollection is, I
5 think, as I testified this morning, the Coleco people were
6 disturbed about our telegram. They were disturbed
7 because they were coming to market with this product,
8 they were concerned about the impact of legal action
9 upon their marketing effort, and they indicated to us
10 a desire to resolve the matter amicably, to take a
11 license and to pay us a royalty.
12

13 Now, I can't recall whether I had a separate
14 discussion with Mr. Schwefel, for example, after the
15 meeting terminated, with the three parties. That may
16 have occurred or in fact I may have just spoken with
17 him on the telephone subsequent thereto. But within a
18 short period of time thereafter, he and I were able to
19 work out an agreement, which I believe we have given to
20 you, in which Coleco agreed to pay us a royalty for our
21 consent not to bring an action against them.

22 Q Do you recall whether you had any face-to-
23 face sessions with Mr. Schwefel or any other representa-
24 tives of Coleco to prepare that agreement?

25 A No, there were no face-to-face sessions to

1
2 prepare that agreement. I don't recall whether the
3 original draft came from him or it came from me, but it
4 was done by mail.

5 Q Did Mr. Schwefel ask you to keep that
6 agreement confidential?

7 A Yes, he did.

8 Q Did he tell you why he wished it be kept
9 confidential?

10 A No, he didn't tell me why.

11 Q Did you inquire of him as to why it should
12 be kept confidential?

13 A I believe it was because of whatever his
14 relationship was with Nintendo, and he just asked me --
15 he didn't ask me. I believe at the time he just said
16 he wanted to treat it confidential.

17 Q Did you agree to treat it confidential?

18 A Yes, I did.

19 Q Did Mr. Schwefel or any other representative
20 of Coleco, whether on the Coleco payroll directly or
21 counsel or other advisor-representative of Coleco, ask
22 you to specify the rights which Universal had or
23 claimed having to King Kong?

24 A No, I don't recall that he did. I do recall
25 talking either -- I believe by telephone with, at one

1 point with his counsel, who may have entered into a
2 discussion with me as to the nature of Universal's rights
3 in King Kong.
4

5 Q What did you tell him in that discussion?

6 A Well, I don't recall specifically what I
7 told him, but I am fairly confident I told him that what
8 we said in the telex or telegram was true, and I told
9 him what we have been advised by counsel, and I believe
10 I would have told them that if he had any questions, to
11 call Mr. Kroft.

12 Q Did you tell him to call Mr. Kroft?

13 A Well, I believe Mr. Kroft was at the meeting
14 that I referred to originally in which Mr. -- both Coleco
15 and Nintendo were represented by counsel, so they knew
16 who he was.

17 I believe that if that would have come up, I
18 would have said that if he had any further questions,
19 he should discuss it with Mr. Kroft.

20 Q Do you recall any respect in which you
21 specified the source of Universal's rights to King Kong?

22 A I believe I would have referred to the
23 telegram.

24 Q Did you refer him to any agreements that
25 Universal had specifically?

presupposes, John--that's why I object to the form of it -- that there's been a position taken.

MR. KIRBY: I understand your objection.

BY MR. KIRBY:

Q Now, Mr. Hadl, can you answer the question?

A Off the record.

(Discussion off the record.)

Q Do you know who at Universal would know what Universal's position is today on whether the original story King Kong is in the public domain?

A I think that Mr. Kroft would be the principal person who would be advising us on what our position was with respect to the book.

You keep referring to the story. I recall that the subject of public domain has come up about the book or at least there was some finding with respect to that in the King Kong litigation. It's the book by Mr. Cooper which is the subject of this discussion about whether something is in the public domain.

Q When you use the verb "was" in describing Mr. Kroft's first statement what your position was, by that you mean was today?

A I think we would rely on the advice of Mr. Kroft to tell us whether any one or more elements of

1 King Kong is or is not in the public domain.

2 Q Now, I believe you testified that you were
3 not sure who had prepared the original draft of the
4 agreement between Universal and Coleco, that is, whether
5 Universal prepared it or whether Coleco prepared it.
6

7 A That's correct. My recollection is that it
8 came from Mr. Schwefel, but I'm not positive, or it
9 could have come from me.

10 MR. KIRBY: Could you please mark this as
11 Defendants' Exhibit 10 for identification?

12 (Agreement between Coleco and Universal
13 marked Defendants' Exhibit 10 for identification,
14 as of this date.)

15 Q I show you what's been marked for identifi-
16 cation as Defendants' Exhibit 10. Is that the agreement
17 between Coleco and Universal to which you refer?

18 A Yes, it is.

19 Q Who suggested the figure 3 percent in
20 paragraph 2 of that agreement?

21 A I don't think it was suggested. I think
22 there was quite a discussion and negotiation about it.

23 Q Did Universal suggest a higher figure?

24 A Yes, sir.

25 Q What was the figure Universal suggested?

1
2 a license from Universal?

A 378

3 A Well, at the moment I don't recall whether
4 there was something in here about it. I don't recall
5 that there is. And I think the answer is, we did not
6 discuss that.

7 Q Universal has granted licenses with respect
8 to King Kong to others, is that correct?

9 A Yes.

10 Q Do you recall who?

11 A I'm sorry, I need that first part of the
12 question; what was it?

13 Q To others with respect to King Kong?

14 A Yes, Tiger Electronics.

15 Q Is Tiger Electronics required to identify
16 on their product that it has obtained something from --

17 A Yes, it is.

18 Q What?

19 A Well, I'd have to look at the agreement, but
20 I think there is something in that agreement about
21 either a trademark or copyright notice.

22 Q Is it correct, as I understand your testimony,
23 that you did not demand that Coleco so indicate on its
24 products?

25 A The answer is yes; the answer is yes. As I

1
2 indicated to you, I think some people could have inter-
3 preted this document you've shown me, which we are now
4 looking at, as a covenant not to sue, rather than a
5 license agreement, but I think I responded to you that
6 I was also prepared to say that I also believe it could
7 be interpreted as a license agreement.

8 Q And indeed, that's how you interpret it?

9 A I regard it as a little bit of both. I
10 wouldn't quibble with you if you also said it's a license
11 agreement. I think we are getting a royalty per article
12 of something sold, and I think we have also agreed not
13 to, in return for that, not to sue, and so I think one
14 could look at it either way.

15 Q Does this constitute, what has been identi-
16 fied as Defendants' Exhibit 9, does that constitute the
17 entire agreement --

18 MR. FAIRHURST: 10 you are referring to?

19 MR. KIRBY: I'm sorry; 10.

20 Q -- between Coleco and Universal?

21 A Well, yes, except that I think attached
22 here, if you also include this letter of May 17th, which
23 was -- is attached to it.

24 Q All right. That's attached to Defendants'
25 Exhibit 10?

1
2 A That's correct.

3 Q And that involves the interpretation of the
4 provision of the agreement?

5 A That's correct.

6 Q I believe you have also testified that it
7 does not contain any reference to the oral agreement you
8 had with Coleco to keep the agreement confidential?

9 MR. FAIRHURST: I don't think he charac-
10 terized oral agreement. He said he would do it.

11 A Well, the answer is, he asked me to keep it
12 confidential and was not an agreement that would, you
13 know, last indefinitely. As is quite apparent, the
14 agreement has been disclosed to other parties. So it
15 was not an agreement in that sense.

16 Q Are there any other things which you asked
17 Coleco to do or Coleco asked you to do with respect to
18 the subject matter of this agreement which are not
19 reflected within the corners of this agreement which
20 has been marked as Defendants' Exhibit 10?

21 A No.

22 Q Nothing?

23 A Not that I recall.

24 Q For example, is Coleco required to submit
25 its products to you for review as to quality?

A No.

A 381

Q Or for review as to whether or not it meets standards that Universal imposes upon licensees?

A No.

Q Has Coleco made any payments to Universal under this agreement

A No.

Q -- when is payment due?

A I believe that we should be receiving a payment fairly shortly. As I recall, it was within 30 days after the close of each calendar quarter, which would have meant sometime around the end of October, and today is November 8th. I haven't been at my office since last Thursday, but I would anticipate a royalty payment within the next week or two.

Q Would the royalty payments be addressed to your attention?

A I believe that's what it says in paragraph 1.

Q Since the time this agreement was entered into and the letter of May 4th which is attached thereto was sent, have you had any further discussions with Coleco representatives?

A Yes.

Q When was the first such occasion after May

1
2 A He said he understood that I have to do that.

3 Q Did you discuss any other aspect of this
4 litigation with him?

5 A Yes. He asked me whether or not they had
6 settled or indicated they were willing to settle.

7 Q Anything else with respect to this litigation?

8 A No.

9 Q Did, at any time prior to Universal and
10 Coleco entering into what you have described as a license
11 agreement, did Coleco ask you to furnish evidence of
12 Universal's rights with respect to King Kong?

13 A Well, first I've described it as a license
14 agreement. I've also said that it can be described
15 differently, but I'll go with that characterization.
16 I think you asked me the main part of the question once
17 before and I guess I can answer it again.

18 Q Please.

19 A I believe that what I responded before is,
20 I had a discussion, I recall, with their counsel at
21 some point about what rights -- well, I think we better
22 have the previous question and answer reread, because
23 it's not clear to me how it came up in the conversation.
24 I think I said that I recalled having a conversation
25 with Coleco's counsel at one point in which we were

1 discussing this lawsuit, and it would have been in the
2 period before the agreement with Coleco was signed, so
3 I can tell you that it would have been --
4

5 Q There is a date at the top.

6 A -- before May -- well, between May 17th,
7 before May 17th, which is when I sent him back the
8 letter, in which we discussed that, and I recall having
9 testified earlier, if they had any further questions,
10 they should call Mr. Kroft.

11 Q What I'm asking you, did they ever ask
12 you specifically to furnish them with any evidence of
13 Universal's rights?

14 A Oh, I see. Not that I recall.

15 Q Do you recall whether you did furnish them
16 with copies of anything from which Universal purportedly
17 derived its rights?

18 A Not that I recall. I will say this, there
19 were representatives, if I'm correct, by the firm of
20 Kaye, Scholer; I don't remember the other names.

21 Q Et al.?

22 A Et al., who were very experienced trademark
23 counsel. I believe David Goldberg was the partner
24 involved. And I have some recollection that King Kong
25 and the King Kong litigation was not totally unfamiliar

A 381

1
2 to him.

3 Q When you say you have some recollection,
4 does that mean they asked you questions about that
5 litigation?

6 A I think I testified previously I remember
7 having conversation with counsel in which some questions
8 came up about King Kong.

9 Q You mean the King Kong litigation?

10 A What our rights were with King Kong, as
11 well as reference to the fact that there had been liti-
12 gation between Universal and RKO.

13 Q Did anyone at Universal hold the position
14 you now hold as director of litigation?

15 A No.

16 Q Who fulfilled those responsibilities, if
17 there were -- and if there were more than one, more than
18 one person, prior to the time you assumed the position?

19 A It would have been the head of the law
20 department.

21 Q And his name is?

22 A At the present time, Sheldon Mittleman.

23 Q When did he become head of the law
24 department?

25 A I don't know. He's been head of the law

A 385

Merchandising License Agreement dated September 18, 1981,
and ask if that is the final amendment signed with
Tiger.

A Yes, it is.

Q Has Universal received any payments under
the merchandising license agreement, as amended, with
Tiger?

A Yes.

Q How many such payments has it received?

A I believe you asked this question in the
written interrogatories and in the interrogatories the
question was answered negatively, because we just
received a payment this past week and I believe that the
royalty statement has been indicated in the documents
which were handed to you this morning.

MR. FAIRHURST: There is a page that gives
the amount.

MR. KIRBY: Would you mark this as Defen-
dants' Exhibit 15 for identification.

(Report reflecting the amount of royalties
received from Tiger marked Defendants' Exhibit 15
for identification, as of this date.)

Q Let me show you what's been marked as
Defendants' Exhibit 15 for identification and ask you

1
2 if that is the report reflecting the amount of royalties
3 received from Tiger.

4 A The answer to that is, that's correct. I am
5 advised by counsel that there was a royalty report which
6 accompanied this statement which has not previously been
7 given to you nor given to you this morning, because,
8 as counsel advises, you didn't specifically ask for it,
9 but I'm happy to give it to you right now, which is the
10 backup royalty report which shows the number of items
11 or units sold which lead to the computation of the
12 dollar figure in your document No. 15.

13 MR. KIRBY: Thank you.

14 Would you, Ms. Reporter, mark what has
15 just been identified by the witness, as Defendants'
16 16 for identification.

17 (Backup royalty report marked Defendants'
18 Exhibit 16 for identification, as of this date.)

19 Q Let me show you what's been marked as
20 Defendants' Exhibit 16 for identification and ask you
21 if you can point to that figure and tell me the figure
22 that reflects the total amount of royalties earned by
23 Universal under the agreement with Tiger to date.

24 A Well, the document No. 15 and No. 16 are
25 completely consistent. The only difference between them

1
2 is, we had received an advance from Tiger of some
3 \$15,000, so that they paid us \$6,127.22, and therefore,
4 when you deduct the 15,000 from the -- well, when you add
5 the 6,127.22 to the 15,000, you get \$21,127.22, which
6 is the grand total of royalties for the third quarter.

7 I might add, it's on the cartridge, the
8 hand-held game and the miniarcade game.

9 (Continued on next page.)
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1
2 Q So all three games which Tiger is licensed
3 by Universal to produce under the trademark "King
4 Kong"?

5 A Right.

6 Q And does that figure of 20 --

7 A \$21,127.22.

8 Q --reflect the total amount through the
9 third quarter that under the agreement Universal
10 was entitled to receive from Tiger?

11 A That's correct.

12 Q Now, you have in front of you the answers
13 to interrogatories. I'd like to refer you to page 7
14 of those answers and your response to interrogatory
15 number 7 you list three licenses by Universal from
16 1980 to present?

17 A Right.

18 Q And you have now furnished us very
19 throughfully, a copy of the royalty report from Tiger.
20 And in our interrogatory answer you indicate that
21 under the Ben Cooper license MCA has received revenues
22 of \$2.2980.04 as of the date the interrogatories were
23 answered?

24 A That's correct.

25 Q Has that amount changed? Have you ever